



**Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda**

**IN THE APPEALS CHAMBER**

Before: Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Andrézia Vaz  
Judge Theodor Meron

Registrar: Mr. Adama Dieng

Decision of: 5 December 2006

**Ferdinand NAHIMANA  
Jean-Bosco BARAYAGWIZA  
Hassan NGEZE  
(Appellants)**

v.

**THE PROSECUTOR  
(Respondent)**

*Case No. ICTR-99-52-A*

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**DECISION ON THE APPELLANT JEAN-BOSCO BARAYAGWIZA'S MOTION  
CONCERNING THE SCHEDULING ORDER FOR THE APPEALS HEARING**

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**Counsel for Jean-Bosco Barayagwiza**

Mr. D. Peter Herbert  
Ms. Tanoo Mylvaganam

**Counsel for Ferdinand Nahimana**

Mr. Jean-Marie Biju-Duval  
Ms. Diana Ellis

**Counsel for Hassan Ngeze**

Mr. Bharat B. Chadha  
Mr. Behram N. Shroff

**Office of the Prosecutor**

Mr. Hassan Bubacar Jallow  
Mr. James Stewart  
Mr. Neville Weston  
Mr. Abdoulaye Seye  
Ms. Linda Bianchi  
Mr. Alfred Orono Orono

**THE APPEALS CHAMBER** of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Serious Violations Committed in the Territory of Neighboring States, between 1 January and 31 December 1994 (“Appeals Chamber” and “Tribunal”, respectively),

**RECALLING** the “Scheduling Order for Appeals Hearing and Decision on Hassan Ngeze’s Motion of 24 January 2006” rendered on 16 November 2006 (“Scheduling Order”), by which the Appeals Chamber ordered that the appeals hearing in the present case shall take place on 16, 17 and 18 January 2007 (“Appeals Hearing”), allowing each of the three co-Appellants two hours and thirty minutes time for their oral submissions on the merits, including arguments in reply, plus ten minutes each for a personal address to the Appeals Chamber;

**BEING SEIZED OF** “The Appellant Jean-Bosco Barayagwiza’s Motion Concerning the Scheduling Order for the Appeals Hearing” filed on 23 November 2006 (“Motion”), requesting that “more time be set aside for the presentation of oral arguments and if necessary an extension of the date for hearing to include Friday 19<sup>th</sup> January 2007” and “[i]n the event that a co-counsel is not available that the proceedings be adjourned for one calendar month”,<sup>1</sup>

**NOTING** the “Prosecutor’s Response to ‘The Appellant Jean-Bosco Barayagwiza’s Motion Concerning the Scheduling Order for the Appeals Hearing’” filed by the Office of the Prosecutor (“Prosecution”) on 28 November 2006 (“Response”), in which the Prosecution: (i) objects to any adjournment of the Appeals Hearing to a later date;<sup>2</sup> (ii) requests to be accorded additional time for its oral arguments in response should the Appellant’s requests for additional time for his oral arguments be granted by the present decision;<sup>3</sup> (iii) contends that “the Appellant’s boycott of his trial does not entitle him to more time for a personal address to the Appeals Chamber”;<sup>4</sup> and (iv) submits that it reserves its right to object to the filing of skeleton arguments during the hearing should they contain new arguments;<sup>5</sup>

**NOTING** that the Appellant did not file a reply to the Response;

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<sup>1</sup> Motion, para. 1; *see also* paras 18, 23 and 24 whereby the Appellant requests that his Counsel be permitted to address the Appeals Chamber for a time of three hours plus one hour and half for a reply to the Prosecution’s arguments, as well as that he be given thirty minutes for the personal address.

<sup>2</sup> Response, paras 2, 3-7.

<sup>3</sup> Response, para. 9.

<sup>4</sup> Response, para. 11.

<sup>5</sup> Response, para. 12.

**NOTING** that in the Motion, the Appellant provides reasons in support of his argument that the Appeals Hearing should be scheduled for a later date than provided in the Scheduling Order including, *inter alia*, his intention to file a new motion under Rule 115 of the Tribunal's Rules of Procedure and Evidence ("Rules") as well to invite the Bar Council of England and Wales Human Rights Committee to attend and observe the Appeals Hearing;<sup>6</sup>

**CONSIDERING** that under Rule 115(A) of the Rules, the parties may file motions for admission of additional evidence on appeal after the appeal hearing, provided that cogent reasons are shown for such a delay;

**CONSIDERING** that a party's intention to invite a third-party observer to the appeals hearing and the availability of that third-party on certain dates are not factors that the Appeals Chamber is required to take into consideration when setting the date for an appeals hearing;

**CONSIDERING** that since the Appeals Chamber's Decision of 23 November 2006<sup>7</sup> upheld the President's decision to refuse the withdrawal of the Appellant's Co-Counsel, the arguments in the Motion in relation to the absence of the Co-Counsel<sup>8</sup> are moot;

**CONSIDERING** that in light of the amendments to the Rules, which entered into force on 10 November 2006, the Appellant's arguments with respect to logistical problems in relation to the preparation of the Appeal Books on or before 18 December 2006<sup>9</sup> are moot, since the Rules no longer place such an obligation on the parties;<sup>10</sup>

**FINDING** therefore that the Appellant has failed to establish good cause for the Appeals Chamber delaying the Appeals Hearing as set in the Scheduling Order;

**NOTING** that the Appellant contends that the time allotted for oral submissions on the merits at the Appeals Hearing is inconsistent with the applicable provisions and jurisprudence of the Tribunal and is inadequate with respect to the complexity of the present case;<sup>11</sup>

**NOTING** further that the Appellant submits that he would need additional time for oral submissions due to a number of factors, *inter alia* (i) the fact "that neither the Appellant nor the current legal team participated in the original trial"; (ii) the nature of the charges and the

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<sup>6</sup> Motion, paras 2 and 3.

<sup>7</sup> Decision on Appellant Jean-Bosco Barayagwiza's Motion Contesting the Decision of the President Refusing to Review and Reverse the Decision of the Registrar Relating to the Withdrawal of Co-Counsel, 23 November 2006.

<sup>8</sup> Motion, paras 4-7.

<sup>9</sup> Motion, para. 7.

<sup>10</sup> *Cf.* Decision on the Prosecutor's Motion to Be Relieved from Filing the Appeal Book and Book of Authorities, 27 November 2006, p. 2.

<sup>11</sup> Motion, paras 10-23.

seriousness of the sentence; (iii) the large number of pre-trial issues of law and fact; (iv) the length of the trial and the amount of evidence involved; (v) the need to cross-reference facts “as between the oral testimony and documentary exhibits which could not be set out in the Appeals Brief”; and (vi) the fact that he was not allowed to surpass the page-limit applicable to his Appeals Brief or to add “any annexes summarizing the position of either party”;<sup>12</sup>

**CONSIDERING** that there exists no provision in the Tribunal’s Statute, Rules or Practice Directions as to the exact time to be allocated for the parties’ oral submissions on appeal, and that such decisions are taken by the Appeals Chamber on a case-by-case basis;

**RECALLING** that the parties are to focus their oral arguments on the grounds of appeal raised in their briefs<sup>13</sup> and that the appeals hearing is not the occasion for presenting new arguments on the merits of the case;

**RECALLING** further that, during the hearing of an appeal, the parties are expected “to prepare themselves in such a way as not simply to recount what has been set out in their written submission, but to confine their oral arguments to elaborating on points relevant to this appeal that they wish to bring to the Appeals Chamber’s attention”;<sup>14</sup>

**CONSIDERING** that the Scheduling Order was issued by the Appeals Chamber under Rule 114 of the Rules in full consideration of the particular circumstances and complexity of the present case in accordance with the practice of the Tribunal;

**FINDING** therefore that the Appellant has failed to demonstrate any need, in the interests of justice, for the Appeals Chamber to allow more time than that allotted for the parties’ oral submissions on the merits at the Appeals Hearing in the Scheduling Order;

**NOTING** that the Appellant also seeks to be permitted to present “a skeleton argument summarizing the oral submissions”, as well as to make the following written submissions on the first day of the appeal hearing, namely “a) a schedule of witness inconsistencies and contradictions b) a schedule setting out the various standards of proof used to make findings of credibility and c) a schedule setting out the identification evidence against the appellant together with the findings of the Trial Chamber”;<sup>15</sup>

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<sup>12</sup> Motion, paras 12, 18-19.

<sup>13</sup> Cf. the Appellant’s arguments in paras 12, 18 and 19 of the Motion.

<sup>14</sup> *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Order Re-Scheduling Appeal Hearing, 5 May 2006, p. 6.

<sup>15</sup> Motion, paras 13 and 22.

**CONSIDERING** that parties may use and/or formally present skeleton arguments, slides or schedules to the Appeals Chamber in support of their oral arguments, provided that they contain no new arguments on the merits of the case and that the opposing party does not object;<sup>16</sup>

**CONSIDERING**, however, that the Appeals Chamber is not in a position to decide whether the use of the documents referred to by the Appellant shall be allowed, since they were not presented with the Motion;

**NOTING** that the Appellant finally requests an extension of time of up to thirty minutes for his personal address to the Appeals Chamber on the grounds that (a) “there is no other jurisdiction where a personal address is short as to amount almost to an afterthought within the context of the proceedings” and (b) that the “Appellant did not attend his trial and had imposed counsel”;<sup>17</sup>

**CONSIDERING** that no statutory or regulatory provision of the Tribunal allows for the “right” of an appellant who is represented by counsel to personally address the Appeals Chamber<sup>18</sup> but that the Appeals Chamber has, in practice, allowed for such an option as a matter of courtesy to appellants;

**FINDING** that the Appellant has failed to demonstrate in the Motion that it is in the interests of justice to allow the Appellant to surpass the time allocated to him by the Scheduling Order for the personal address;

**ON THE BASIS OF THE FOREGOING,**

**HEREBY DISMISSES** the Motion.

Done in English and French, the English text being authoritative.

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Judge Fausto Pocar  
Presiding

Dated this 5<sup>th</sup> day of December 2006,  
At The Hague, The Netherlands.

**[Seal of the Tribunal]**

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<sup>16</sup> *E.g.*, *The Prosecutor v. Goran Jelisić*, Case No. IT-95-10-A, Public Transcript of Hearing (Cross-Appeal on Sentence), 22 and 23 February 2001, pp 37, 198, 199 and 245; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Transcript of Hearing of 17 May 2004 (Appeal Proceedings-Open session), pp 187, 255, 257-259, 283-285; *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Transcript of Hearing of 19 May 2004 (Appeal Proceedings-Open session), pp 574-575, 577-578, 608-609; *The Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Public Transcript of Hearing of 2 June 2006 (Appeal Proceedings-Open session), pp 40-42.

<sup>17</sup> Motion, paras 24-25.

<sup>18</sup> *See* Scheduling Order, p. 3; Decision on Hassan Ngeze’s Motions Concerning Restrictive Measures of Detention, 20 September 2006, p. 7.